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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,585	02/10/2004	Mark A. Anderson	03145P	2147
27804	7590	11/18/2005		
HOLLAND & BONZAGNI, P.C. 171 DWIGHT ROAD, SUITE 302 LONGMEADOW, MA 01106-1700				
			EXAMINER	
			WOOD, KEVIN S	
			ART UNIT	PAPER NUMBER
			2874	

DATE MAILED: 11/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/775,585

Applicant(s)

ANDERSON ET AL.

Examiner

Kevin S. Wood

Art Unit

2874

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-36 is/are pending in the application.
- 4a) Of the above claim(s) 1-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-17 and 29 is/are rejected.
- 7) ☒ Claim(s) 18-28 and 30-36 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/17/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **NON-FINAL REJECTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of claims 15-36 in the reply filed on 14 October 2005 is acknowledged.
2. Claim 1-14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **with** traverse in the reply filed on 14 October 2005.
3. Applicant's election of claims 15-36 in the reply filed on 14 October 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 15-17 and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,453,097 to Newton et al.

Referring to claims 15-17, the Newton et al. reference discloses an optical fiber cable, comprising: at least one optical fiber (22,24); a primary buffer member (28); a secondary buffer member (36) circumferentially surrounding the primary buffer member, where the secondary buffer member is prepared from a fluoropolymer material; a strength member (42) circumferentially surrounding the secondary buffer member; and an outer protective jacket (44) circumferentially surrounding the strength member. The Newton et al. reference does not appear to specifically disclose that when the optical fiber cable is tested in accordance with Boeing Specification Support Standard BSS 7324 (December 2, 1998) Smoke Emission Test Method, the cable produced, at four minutes in the flaming mode, a smoke with a specific optical density of less than 100, or less than 80, or less than 50. According to section 2112.01 of the MPEP, in a product claim, when the structure recited in the reference is substantially identical to that of the claims, the claimed properties or functions are presumed to be inherent. It is the examiner's opinion that the structure within the reference is substantially identical to the structure of the claims. Therefore the testing properties as claimed would be inherent to the optical fiber cable disclosed by Newton et al. See Fig. 2 along with its respective portion of the specification.

Referring to claim 29, the Newton et al. reference discloses that the strength member (42) is in the form of polyaramid yarn, such as Kevlar and Nomex. See Fig. 2 along with its respective portion of the specification.

***Allowable Subject Matter***

6. Claims 18-28 and 30-36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin S. Wood whose telephone number is (571) 272-2364. The examiner can normally be reached on Monday-Thursday (7am - 5:30 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rodney B. Bovernick can be reached on (571) 272-2344. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kevin S. Wood  
Patent Examiner